



ENVIRONMENTAL PROTECTION AGENCY

FRL-9915-97-Region-6

40 CFR Part 271

[EPA-R06-RCRA-2013-0785]

Oklahoma: Final Authorization of State Hazardous Waste Management Program

Revision

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Oklahoma Department of Environmental Quality (ODEQ) has applied to the Environmental Protection Agency (EPA) for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Oklahoma's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on **[insert date 60 days after publication in the Federal Register]** unless the EPA receives adverse written comment

by [insert date 30 days after publication in the Federal Register]. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the Federal Register and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *patterson.alima@epa.gov*.
3. Mail: Alima Patterson, Region 6, Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.
4. Hand Delivery or Courier. Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov*, or e-mail. The Federal *regulations.gov* Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101-1677, (405) 702-7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson , Region 6, Regional Authorization Coordinator, State /Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, (214) 665-8533, EPA Region 6 1445 Ross Avenue, Dallas Texas 75202-2733, and Email address patterson.alima@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the

changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Oklahoma's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma Final authorization to operate its hazardous waste program with the changes described in the authorization application. Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders. Also section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Statute 1144(August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). The State of Oklahoma did not apply for authorization to administer Indian Country in this authorization document. New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibition in Oklahoma including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action is already effective under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if the EPA Receives Comments That Oppose This Action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes

on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Oklahoma Previously Been Authorized?

Oklahoma initially received final Authorization on January 10, 1985, (49 FR 50362-50363) published December 27, 1984 to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280- 14282), effective June 18, 1990; September 26, 1990 (55 FR 39274) effective November 27, 1990; April 2, 1991 (56 FR 13411-13413) effective June 3, 1991; September 20, 1991 (56 FR 47675-47677) effective November 19, 1991; September 29, 1993 (58 FR 50854-50856) effective November 29, 1993; October 12, 1993 (58 FR 52679-52682) effective December 13, 1993; October 7, 1994 (59 FR 51116-51122) effective December 21, 1994; January 11, 1995 (60 FR 2699-2702) effective April 27, 1995; October 9, 1996 (61 FR 52884-52886) effective December 23, 1996; Technical Correction March 14, 1997 (62 FR 12100-12101) effective March 14, 1997; September 22, 1998 (63 FR 50528-50531) effective November 23, 1998; March 29, 2000

(65 FR 16528-16532) effective May 30, 2000; May 10, 2000 (65 FR 29981-29985) effective June 10, 2000; January 2, 2001 (66 FR 28 - 33) effective March 5, 2001; April 9, 2003 (68 FR 17308-17311) effective June 9, 2003 and February 4, 2009 (74 FR 5994-6001); (66 FR 18927 – 18930) effective June 6, 2011, March 15, 2012(77 FR 15273-15276) effective May 14, 2012 and effective July 29, 2013, May 29,2013 (78 FR 32161-32165). The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on December 9, 1998 (63 FR 67800-67834) effective February 8, 1999, August 26, 1999 (64 FR 46567-46571) effective October 25, 1999, August 27, 2003 (68 FR 51488-51492) effective October 27, 2003, August 27, 2010 (75 FR 36546) June 28, 2010, May 17, 2012 (77 FR 29231-29235) effective July 16, 2012 and May 29, 2013 (78 FR 32161 – 32165) effective July 29, 2013. On June 28, 2013, Oklahoma submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Oklahoma Hazardous Waste Management Act (“OHWMA”) provides the ODEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XXII, and designates the ODEQ as the State agency to cooperate and share information with EPA for purpose of hazardous waste regulation. The Oklahoma Environmental Quality Code (“Code”), at 27 A O.S. Section 2-7-101 et seq establishes the statutory authority to administer the Hazardous waste management program under Subtitle C. The State regulations to manage the Hazardous waste management program is at Oklahoma Administrative Code (OAC) Title 252 Chapter 205.

The DEQ adopted applicable Federal hazardous waste regulations as amended through July 1, 2011 which became effective July 1, 2013. The provisions for which the State of Oklahoma is seeking authorization are documented in the Regulatory Documentation For Federal Provisions For Which The State Of Oklahoma Is Seeking Authorization, Federal Final Rules Published Between July 1, 2011 through June 30, 2012 RCRA Cluster XXII prepared on June 24, 2013.

The DEQ incorporates the Federal regulations by reference and there have been no changes in State or Federal laws or regulations that have diminished the DEQ's ability to adopt the Federal regulations by reference as set forth in the authorizations at 77 FR 22229 through 22232 effective May 14, 2012 for RCRA Cluster XXII. The Federal Hazardous waste regulations are adopted by reference by the DEQ at OAC 252:205, Subchapter 3. The DEQ does not adopt Federal regulations prospectively.

The State Oklahoma Hazardous waste program has in place the statutory authority and regulations for all required components of Hazardous Waste Technical Corrections and Clarification rule (Checklist 228) in RCRA Cluster XXII. These statutory and regulatory provisions were developed to ensure the State program is equivalent to, consistent with and no less stringent than the Federal Hazardous waste management program.

The Environmental Quality Act, at 27A O.S. Section 1-3-101(E), grants the Oklahoma Corporation Commission ("OCC") authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as

underground storage tanks. To clarify areas of environmental jurisdiction, the ODEQ and OCC developed an ODEQ/OCC Jurisdictional Guidance Document to identify respective areas of jurisdiction. The current ODEQ/OCC Jurisdictional Guidance Document was amended and signed on January 27, 1999. The revisions to the State Program necessary to administer Cluster XXII will not affect the jurisdictional authorities of the ODEQ or OCC.

The ODEQ adopted RCRA Cluster XXII applicable federal hazardous waste regulations as amended through July 1, 2012 and became effective on July 1, 2013. The rules were also codified at OAC 252:205 et seq, Subchapter 3.

Pursuant to OAC 252:205-3-1, the State's incorporation of Federal regulations does not incorporate prospectively future changes to the incorporated sections of the 40 CFR, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC Title 252, Chapter 205 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect July 1, 2012. The State of Oklahoma incorporates by reference the provisions of 40 Code of Federal Regulations (CFR) parts 124 of 40 CFR that are required by 40 CFR 271.14 (with the addition of 40 CFR 124.19(a) through (c), 124.19(e), 124.31, 124.32, 124.33 and subpart G); 40 CFR parts 260-268 [with the exception of 260.21, 262 subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.1(g)12), 265.149, 265.150, 265.1030(c),

265.1050(f) 265.1080(e), 265.1080(f), 265.1080(g), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)]; 40 CFR part 270 [with the exception of 270.1(c)(2)(ix and 270.14(b)(18)]; 40 CFR part 273; and 40 CFR part 279.

The DEQ is the lead Department to cooperate and share information with the EPA for purpose of hazardous waste regulation.

Pursuant to 27A O.S. Section 2-7-104, the Executive Director has created the Land Protection Division (LPD) to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of the State program subtitle C Hazardous waste management program.

G. What Changes Are We Approving In Today's Action?

On June 28, 2013, the State of Oklahoma submitted final complete program applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous waste revisions promulgated between July 1, 2011 through June 30, 2012 which is in (RCRA Cluster XXII). Oklahoma requirements are included in a chart with this document.

Description of federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Hazardous Waste Technical Corrections and Clarifications. (Checklist 228).	77 FR 22229-22232, May 14, 2012	Oklahoma Statutes Title 27A Section 2-7-101 et seq., Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2013; Oklahoma Administrative Code, Title 252, Chapter 205, as amended effective July 1, 2013.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Oklahoma will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

J. How Does Today's Action Affect Indian Country (8 U.S.C. 1151) in Oklahoma?

Section 8 U.S.C. 1151 does not affect the State of Oklahoma because under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 ("SAFETEA"), Public Law 109-59, 119 Statute 1144(August 10, 2005) provides the

State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). However, the State of Oklahoma is not seeking authorization to administer authorization under RCRA Subtitle C in this FR document.

K. What Is Codification and Is the EPA Codifying Oklahoma's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart LL for this authorization of Oklahoma's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this Federal Register notice.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application to require

the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective **[insert date 60 days after publication in the Federal register]**.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 5, 2014.

Ron Curry,
Regional Administrator,
Region 6.

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